

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2003-326-C

IN RE:)	
)	
Analysis of Continued Availability)	BIRCH TELECOM OF
Of Unbundled Local Switching for)	THE SOUTH, INC.'S
Mass Market Customers Pursuant)	RESPONSES TO BELLSOUTH'S
To the Federal Communication)	FIRST REQUESTS FOR
Commission's Triennial Review Order)	PRODUCTION OF
)	DOCUMENTS

Birch Telecom of the South, Inc. ("Birch") pursuant to S.C. Ann. Regs 103-851 and Order No. 2003-667, issued on November 7, 2003, hereby submits its responses to BellSouth Telecommunications, Inc.'s First Request For Production of Documents to Birch Telecom of the South, Inc.

1. Produce all documents identified in response to BellSouth's First Set of Interrogatories.

Response:

All documents relevant to Birch's responses to BellSouth's First Set of Interrogatories have been provided with Birch's Interrogatory responses.

2. Produce every business case in your possession, custody or control that evaluates, discusses, analyzes or otherwise refers or relates to the offering of a qualifying service in the State of South Carolina.

Response:

Birch objects to this question to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

The Triennial Review Order explicitly contemplates that in considering whether a competing carrier economically can compete in a given market without access to a particular unbundled network element, the Commission must consider the likely revenues and costs associated with the given market based on the *most efficient business model* for entry rather than to a *particular carrier's business model*. TRO at ¶ 326. In particular, the FCC stated:

In considering whether a competing carrier could economically serve the market without access to the incumbent's switch, the state commission must also consider the likely revenues and costs associated with local exchange mass market service . . . The analysis must be based on the *most efficient model* for entry rather than to any *particular carrier's business model*. *Id.* [Emphasis Added]

Additionally, with respect to economic entry, in ¶ 517, the FCC stated that "...[t]he analysis must be based on the most efficient business model for entry rather than to any particular carrier's business model." Furthermore, in Footnote 1579 of Para. 517, the FCC clarified that "...[s]tate commissions should not focus on whether competitors operate under a cost disadvantage. State commissions should determine if entry is economic by conducting a business case analysis for an *efficient entry*. [Emphasis Added]

In addition to these statements, the FCC also made numerous other references to the operations and business plans of an efficient competitor, specifically rejecting a review of a particular carrier's business plans or related financial information. *See*, ¶ 84, Footnote 275 ("Once the UNE market is properly defined, impairment should be tested by asking whether a *reasonable efficient CLEC* retains the ability to compete even without access to the UNE.") (citing BellSouth Reply, Attach 2, Declaration of Howard A. Shelanski at ¶ 2 (Emphasis Added)). *See also*, TRO at ¶ 115; ¶ 469; ¶ 485, Footnote 1509; ¶ 517, Footnote 1579; ¶ 519, Footnote 1585; ¶ 520, Footnotes 1588 and 1589; ¶ 581, and Footnote 1788.

Accordingly, the FCC's TRO specifically contemplates consideration of financial and related information of an *efficient "model" competitor* and not that of Birch or any other *particular competitor*. As a result, discovery of Birch financial information or business plans will not lead to the discovery of admissible evidence in this proceeding.

3. Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you only provide qualifying service.

See Response to Question No. 2.

4. Produce all documents referring or relating to the average number of access lines you provide to end user customers in South Carolina to whom you only provide qualifying service.

Response:

Birch does not keep the data in the format requested, and therefore, has no accompanying documents.

5. Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you only provide non-qualifying service.

Response:

Birch does not keep the data in the format requested, and therefore, has no accompanying documents.

6. Produce all documents referring or relating to the average monthly revenues you receive from end user customers in South Carolina to whom you provide both qualifying and non-qualifying service.

Response:

Birch incorporates its objections to Questions No. 2 and No. 3 as if fully set forth. Birch derived the data requested from internal data warehouse systems, and therefore, no documents are available. Please refer to Birch's Response to Interrogatory No. 31.

7. Produce all documents referring or relating to the average number of access lines you provide to end user customers in South Carolina to whom you provide both qualifying and non-qualifying service.

Response:

Birch derived the data requested from internal data warehouse systems and, therefore, no documents are available. Please refer to Birch's Response to Interrogatory No. 32.

8. Provide all documents referring or relating to the classifications used by Birch to offer service to end user customers South Carolina (e.g., residential customers, small business customers, mass market customers, enterprise customers, or whatever type of classification that you use to classify your customers).

Response:

Please refer to Birch's publicly available tariffs.

9. Produce all documents referring or relating to the average acquisition cost for each class or type of end user customer served by Birch, as requested in BellSouth's First Set of Interrogatories, No. 34.

Response:

Birch incorporates its objections to Questions No. 2 and No. 3 as if fully set forth. Subject to the foregoing objection, please refer to Birch's Response to Interrogatory No. 34.

10. Produce all documents referring or relating to the typical churn for each class or type of end user customer served by Birch, as requested in BellSouth's First Set of Interrogatories, No. 35.

Response:

Birch incorporates its objections to Questions No. 2 and No. 3 as if fully set forth. Subject to the foregoing objections, please refer to Birch's Response to Interrogatory No. 35.

11. Produce all documents referring or relating to how Birch determines whether to serve an individual customer's location with multiple DS0s or with a DS1 or larger transmission system.

Response:

Please refer to Birch's Response to Interrogatory No. 40. Birch has no knowledge of any documents referring or relating to how Birch determines whether to serve an individual customer's location with multiple DS0s or with a DS1 or larger transmission system.

12. Produce all documents referring or relating to the typical or average number of DS0s at which Birch would choose to serve a particular customer with a DS1 or larger transmission system as opposed to multiple DS0, all other things being equal.

Response:

Please see response to Question No. 11.

13. Produce all documents referring or relating to the cost of capital used by Birch in evaluating whether to offer a qualifying service in a particular geographic market.

Response:

Birch incorporates its objections to Question No. 2 and No. 3 as if fully set forth. Subject to the foregoing objection, please refer to Birch's Responses to Interrogatories No. 43 and 44.

14. Produce all documents referring or relating to the time period used by Birch in evaluating whether to offering a qualifying service in a particular geographic market (e.g., one year, five years, ten years or some other time horizon over which a project is evaluated)?

Response:

Birch incorporates its objections to Questions No. 2 and No. 3 as if fully set forth. Subject to the foregoing objection, please refer to Birch's Response to Interrogatory No. 45.

15. Produce all documents referring or relating to your estimates of sales expense when evaluating whether to offer a qualifying service in a particular geographic market.

Response:

Birch incorporates its objections to Questions No. 2 and No. 3 as if fully set forth. Subject to the foregoing objection, Birch has no knowledge of any documents relating to this response.

16. Produce all documents referring or relating to your estimates of general and administrative (G&A) expenses when evaluating whether to offer a qualifying service in a particular geographic market.

Response:

Birch incorporates its objections to Questions No. 2 and No. 3 as if fully set forth. Subject to the foregoing objection, please see Birch's Response to Interrogatories No. 48 and 49.

17. Produce all documents referring or relating to any complaints by Birch or its end user customers about individual hot cuts performed by BellSouth since January 1, 2000.

Response: N/A

18. Produce all documents referring or relating to a batch hot cut process used by any ILEC in the BellSouth region that is acceptable to Birch or that Birch believes is superior to BellSouth's batch hot cut process.

Response:

Birch has not found a batch hot cut process used by any ILEC that is acceptable and, therefore, has no documents referring or relating to the batch hot cut process.

19. Produce all documents referring or relating to an individual hot cut process used by any ILEC in the BellSouth region that is acceptable to Birch or that Birch believes is superior to BellSouth's individual hot cut process.

Response:

Birch has not found an individual hot cut process used by an ILEC that is acceptable and, therefore, has no documents referring or relating to an individual hot cut process.

20. Produce all documents referring or relating to a batch hot cut process used by any ILEC outside the BellSouth region that is acceptable to Birch or that Birch believes is superior to BellSouth's batch hot cut process.

Response:

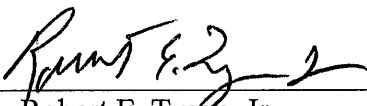
Please refer to Birch's Response to Question No. 18 above.

21. Produce all documents referring or relating to an individual hot cut process used by any ILEC outside the BellSouth region that is acceptable to Birch or that Birch believes is superior to BellSouth's individual hot cut process.

Response:

Please refer to Birch's Response to Question No. 19 above.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

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December 17, 2003

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Birch Telecom of the South, Inc., do hereby certify that I have a copy of the pleading(s) hereinbelow specified via e-mail to the following address(es):

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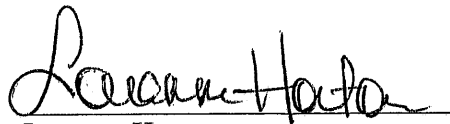
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December 17, 2003